

COREY LOUIS HINES,)
)
Movant,)
)
v.) No. 4:10CV422 HEA
)
DAVID HAYES, et al.,)
)
Respondents.)

This matter is before the Court on movant’s fifth successive motion under 28 U.S.C. § 2255.¹ The motion is similar to the successive motions that movant previously brought in the cases *Hines v. Devore*, 4:09CV1236 HEA, *Hines v. USA*, 4:10CV41 HEA, *Hines v. Hayes*, 4:10CV39 HEA, and *Hines v. Hayes*, 4:10CV282 HEA. As such, the Court will dismiss this action for the reasons set forth in those cases.

Movant's motion to file this action as one brought pursuant to 28 U.S.C. § 2241 and his motion for summary judgment will be denied. Movant is reminded that because his action attempts to attack his conviction and sentence, it must be brought

¹Although movant filed the motion as a petition under § 2241, because movant is challenging the constitutionality of his conviction and sentence, he may not proceed under 28 U.S.C. § 2241. As such, the Court will construe the present action as one brought pursuant to 28 U.S.C. § 2255.

under 28 U.S.C. § 2255, as he previously did in *Hines v. United States*, 4:07CV1884 HEA.² The United States Court of Appeals for the Eighth Circuit has held that a writ of habeas corpus may issue under § 2241 only if it appears that the remedy under § 2255 is inadequate or ineffective. It matters not that his request for § 2255 relief has already been denied previously, as a § 2255 motion is not inadequate merely because § 2255 relief has already been denied. *See United States v. Lurie*, 207 F.3d 1075, 1077 (8th Cir. 2000). Movant simply cannot be afforded the relief he seeks under § 2241, which has very limited means for this Court's jurisdiction.

Accordingly,

IT IS HEREBY ORDERED that movant's fifth successive motion under 28 U.S.C. § 2255 is **DISMISSED**, without prejudice, for the reasons set forth in the cases *Hines v. Devore*, 4:09CV1236 HEA, *Hines v. USA*, 4:10CV41 HEA, *Hines v. Hayes*, 4:10CV39 HEA and *Hines v. Hayes*, 4:10CV282 HEA.

IT IS FURTHER ORDERED that movant's motion to modify filing error [Doc. #2] is **DENIED**.

²However, as previously noted, movant is barred from filing a successive § 2255 unless he receives permission from the Eighth Circuit Court of Appeals to do so. 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that movant's motion for summary judgment [Doc. #3] is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

An Order of Dismissal will accompany this Order.

Dated this 4th day of May, 2010.

A handwritten signature in cursive script, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE